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10/593,679	09/20/2006	Egon Evertz	23699	2866
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/593,679

Applicant(s)

EVERTZ, EGON

Examiner

BRANON C. PAINTER

Art Unit

3633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 September 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/US)
- Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on applications filed in Germany on 04/07/04 & 07/30/04. It is noted, however, that applicant has not filed a certified copy of the foreign applications as required by 35 U.S.C. 119(b).

Information Disclosure Statement

2. The references cited in the Search Report for PCT/DE2005/000538 have been considered, but will not be listed on any patent resulting from this application because they were not provided on a separate list in compliance with 37 CFR 1.98(a)(1). In order to have the references printed on such resulting patent, a separate listing, preferably on a PTO/SB/08A and 08B form, must be filed within the set period for reply to this Office action.

Drawings

3. The drawings are objected to because they do not illustrate the invention in a way that is accessible to one of ordinary skill in the art. It is unclear what is being illustrated and how the drawings relate to the claimed subject matter. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement

drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claim 10 is objected to because of the following informalities:
 - a. Claim 10, "in/at." For the purpose of this examination, the examiner presumes this should read "in or at."
 - b. Appropriate correction is required for all preceding objections.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. Regarding claim 1, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).
8. Claims 2-19 are rejected under 35 U.S.C. 112, second paragraph, for depending from an indefinite claim.
9. Claim 19 recites the limitation "warning system (alarm system)". It is unclear whether the limitation is for a warning system, or an alarm system, or a system that can be both a warning and an alarm system. For the purpose of this examination, the examiner presumes that either a warning or an alarm system meets the claim limitation.

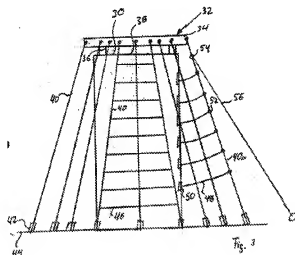
Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Muller (DE20302249 – English translation).
12. Regarding claim 1, Muller discloses a building protection system having all of the applicant's claimed structure, including:
- a. Wire cables maintained under tension (40, Fig. 3).
 - b. The cable ends anchored in a clamping body that has a guide shaped such that the reaction force of the clamping body increases with an increase in tensile force (42; p. 8, 1-3).

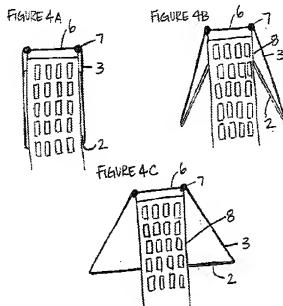


Reproduced from Muller

13. Regarding claim 17, Muller discloses wire cables under tension forming a net structure (40, 46).
14. Claims 1 and 10-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Jackson (2003/0115830).

15. Regarding claim 1, Jackson discloses a building protection system having all of the applicant's claimed structure, including:

- a. Wire cables maintained under tension (3, Figs. 4).
- b. The cable ends anchored in a clamping body that has a guide shaped such that the reaction force of the clamping body increases with an increase in tensile force (connection point of 2 and 3).



Reproduced from Jackson

16. Regarding claim 10, Jackson discloses wire cables capable of being accommodated at the roof (3 stored in 7; [0028]).
17. Regarding claim 11, Jackson discloses a frame structure outside the building (6) that offers a surface in which the wire cables can be accommodated (7).
18. Regarding claim 12, Jackson discloses profiles mounted on the roof that form cavities in which wire cables can be accommodated (7).

19. Regarding claim 13, Jackson discloses a clamping body that is translationally movably connected to the building (2; [0028]).
20. Regarding claim 14, Jackson discloses profiles (2) mounted on facades (8) and that can be rotated, swung, or moved translationally (2).
21. Regarding claim 15, Jackson discloses profiles (2) that cause the cables to be pulled out of storage places (7) and be placed under tension.
 - a. The examiner notes that claim 15 is considered to be a product-by-process claim. The patentability of the product does not depend on its method of production. Determination of patentability is based on the product itself. See MPEP 2113. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

Claim Rejections - 35 USC § 103

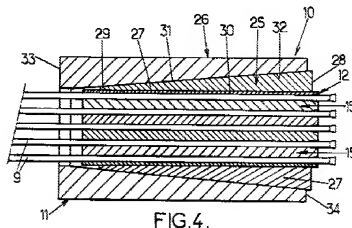
22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
23. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
24. Claims 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson (2003/0115830).
25. Regarding claim 16:
- a. Jackson discloses a building protection system as set forth above, including profiles (2).
 - b. Jackson does not expressly disclose that the profiles are essentially comprised of metal.
 - c. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Jackson's profiles from metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.
 - d. The examiner further notes that it would have been an obvious matter of design choice to modify the profiles by making them from metal, since applicant has not disclosed that metal profiles solves any stated problem or is for any particular purpose and it appears that the profiles of Jackson would perform equally well.

26. Claims 18-19 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jackson (2003/0115830).
27. Regarding claim 18-19:
- a. Jackson discloses a building protection system as set forth above, and further discloses a system that deploys via rotational, swinging, or translational movement of the profiles (2) [claim 18] and that may be "deployed at will, or, upon a sensed condition, by, for example, radar, heat, etc." ([0008]) [claims 18-19].
 - b. Jackson appears to disclose a warning system that results in the deployment of the protection system ([0008]).
 - c. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the system of Jackson by automating the profile deployment to react to an alarming condition such as excess heat, since Jackson discloses such deployment and it would allow the building to remain protected when "protection guards" aren't on duty and would further protect against threats unseen by the deployment experts.
28. Claims 2-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muller (DE20302249 – English translation) in view of Stubler et al. (6,487,757).
29. Regarding claim 2:
- a. Muller discloses a building protection system as set forth above, including a clamping body (42).

- b. Muller does not expressly disclose that the clamping body guide has a peripheral surface that narrows progressively in the direction of the tensile force.
- c. Stubler discloses a system for connecting a cable to a ground structure that includes a clamping body (26, Fig. 4) with a guide (25) having a peripheral surface that narrows progressively in the direction of the tensile force.
- d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to replace the clamping body of Muller with the clamping body as taught by Stubler, as the two clamping bodies are art-recognized equivalents.
- e. The examiner further notes that it would have been obvious to a person of ordinary skill in the art to replace the clamping body of Muller with the clamping body as taught by Stubler, since the frustoconical body-guide relationship ensures a strong connection between the cables and clamping body.



Reproduced from Stubler

30. Regarding claim 3, Muller/Stubler as modified above discloses a building protection system with conical clamping body, with Stubler further disclosing an inner guide surface material that is harder than the wire cable material (Fig. 4).

- a. The examiner notes that for Stubler to function as intended, the inner guide surface must necessarily be harder than the wire cable, because if it wasn't the tensioned cables would bend and distort the guide, and eventually pull out of the guide entirely.

31. Regarding claim 4, Muller/Stubler as modified above discloses a building protection system with conical clamping body, with the combination further disclosing a cable that is plastically deformed when relative movement occurs through the guide in the direction of the tensile force.

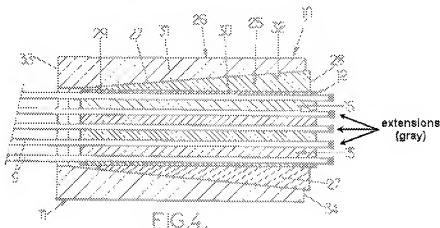
- a. The examiner notes that once the cables of Muller/Stubler are placed in tension, any additional force in the tensile direction results in plastic deformation of the cables.

32. Regarding claim 5, Muller/Stubler as modified above discloses a building protection system with conical clamping body, with Stubler further disclosing a cable's end that is divided into a plurality of partial cable elements disposed at mutually acute angles (9).

33. Regarding claim 6, Muller/Stubler as modified above discloses a building protection system with conical clamping body, with Stubler further disclosing a guide comprised of a plurality of clamping jaws mounted at individual mutual angles (25).

34. Regarding claim 7, Muller/Stubler as modified above discloses a building protection system with conical clamping body, with Stubler further disclosing wire cable extensions comprising strip-like bodies (amended Fig. 4).

- a. The examiner notes that the gray portions in Fig. 4 are considered the extensions of the wire.



Reproduced from Stubler (amended)

35. Regarding claim 6, Muller/Stubler as modified above discloses a building protection system with conical clamping body, with Stubler further disclosing extensions having a continuous broadening (amended Fig. 4).

36. Regarding claim 9:

- a. Muller/Stubler as modified above discloses a building protection system with conical clamping body, with Stubler further disclosing multiple cables held by a single sleeve (9, Fig. 4).
- b. Muller/Stubler does not expressly disclose that these cables have different breakage strengths or reaction forces.

- c. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the cables of the combination by giving some a different breakage strength, since it is well-known to provide cable bundles with one cable of lesser strength in order to provide a warning (via the snapped cable of lesser strength) that the bundle has been placed under too much tension.

Conclusion

37. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
38. The cited patents listed on the included form PTO-892 further show the state of the art with respect to building protection systems in general.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANON C. PAINTER whose telephone number is (571)270-3110. The examiner can normally be reached on Mon-Fri 7:30AM-5:00PM, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571) 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. C. P./
Examiner, Art Unit 3633
10/31/08
/Basil Katcheves/
Primary Examiner, Art Unit 3635